

Assembly Bill No. 1084

Passed the Assembly September 9, 2009

Chief Clerk of the Assembly

Passed the Senate September 3, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 65961, 66023, and 66452.22 of, and to add Section 66019 to, the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 1084, Adams. Local planning: development projects: fees.

(1) Existing law extends by 24 months the expiration date of any tentative or vesting tentative subdivision map or parcel map, as the case may be, for which a tentative or vesting tentative map has been approved that had not expired as of July 15, 2009, and that will expire before January 1, 2012.

Existing law prohibits a city, county, or city and county from requiring as a condition to the issuance of any building permit or equivalent permit for single- or multiple-family residential units conformance with or the performance of any conditions that the city, county, or city and county could have lawfully imposed as a condition to the previously approved tentative or parcel map for a period of 3 years following recordation of the final map or parcel map for the subdivision.

This bill would maintain this provision but recast it within the Government Code.

(2) Notwithstanding the above provision, existing law provides that a city, county, or city and county is not prohibited from levying a fee or imposing a condition that requires the payment of a fee upon the issuance of a building permit or after the issuance.

This bill would delete this provision and instead provide that, for purposes only of a tentative subdivision map or parcel map that is extended by 24 months pursuant to a specified law, a city, county, or city and county is not prohibited from levying a fee or imposing a condition that requires the payment of a fee, including an adopted fee that is not included within an applicable zoning ordinance, upon the issuance of a building permit.

(3) The Mitigation Fee Act requires a local agency to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting prior to adopting an ordinance, resolution, or other legislative enactment adopting a

specified type of new fee or approving an increase in a specified type of existing fee. The act also requires the local agency to publish, in accordance with a specified provision of law, notice of the time and place of the meeting, including a general explanation of the matter to be considered. The act provides that any cost incurred by a local agency in conducting the hearing may be recovered as part of the fees which were the subject of the hearing.

This bill would additionally require a city, county, or city and county to mail notice of the time and place of the meeting, including a general explanation of the matter to be considered and a statement that specified data is available, at least 14 days prior to the first meeting to any interested party who has filed a written request with the city, county, or city and county for mailed notice of a meeting on a new or increased fee to be enacted by the city, county, or city and county. The bill would authorize the legislative body of the city, county, or city and county to establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. The bill would also authorize the legislative body to send the notices electronically. The bill would require a city, county, or city and county to make available to the public data indicating the amount of cost, or estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues. The bill would also require any new or increased fee adopted by a city, county, or city and county to be effective no earlier than 60 days following the final action on the adoption or increase of the fee, unless the city, county, or city and county follows specified procedures. By adding to the duties of cities, counties, and cities and counties, this bill would impose a state-mandated local program. The bill would authorize a city, county, or city and county that receives a request for mailed notice pursuant to the above provision, or a local agency that receives a request for mailed notice pursuant to another specified provision, to provide notice via electronic mail for those who specifically request electronic mail notification. The bill would specify that this electronic mail notification operates as an alternative to the mailed notice required by the above provisions.

(4) Existing law authorizes any person to request an audit to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any

product or service provided by the local agency. If a person makes that request, the legislative body of the local agency is authorized to retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable. The local agency is authorized to recover the cost of having the audit conducted by an independent auditor from the person who requests the audit, and the audit is required to conform to generally accepted auditing standards.

This bill would additionally authorize any person to request an audit to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any public facility, as defined, provided by the local agency. The bill would also require the local agency to retain an independent auditor only if the person requesting the audit deposits with the local agency the amount of the agency's reasonable estimation of the cost of the audit. The bill would require the local agency to adjust the amount of any fee or charge to the extent it determines that the fee or charge does not meet specified requirements. By adding to the duties of local agencies, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 65961 of the Government Code is amended to read:

65961. Notwithstanding any other provision of law, except as provided in subdivisions (e) and (f), upon approval or conditional approval of a tentative map for a subdivision of single- or multiple-family residential units, or upon recordation of a parcel map for such a subdivision for which no tentative map was required, during the five-year period following recordation of the final map or parcel map for the subdivision, a city, county, or city and county shall not require as a condition to the issuance of any building permit or equivalent permit for such single- or

multiple-family residential units, conformance with or the performance of any conditions that the city or county could have lawfully imposed as a condition to the previously approved tentative or parcel map. Nor shall a city, county, or city and county withhold or refuse to issue a building permit or equivalent permit for failure to conform with or perform any conditions that the city, county, or city and county could have lawfully imposed as a condition to the previously approved tentative or parcel map. However, the provisions of this section shall not prohibit a city, county, or city and county from doing any of the following:

(a) Imposing conditions or requirements upon the issuance of a building permit or equivalent permit which could have been lawfully imposed as a condition to the approval of a tentative or parcel map if the local agency finds it necessary to impose the condition or requirement for any of the following reasons:

(1) A failure to do so would place the residents of the subdivision or of the immediate community, or both, in a condition perilous to their health or safety, or both.

(2) The condition is required in order to comply with state or federal law.

(b) Withholding or refusing to issue a building permit or equivalent permit if the local agency finds it is required to do so in order to comply with state or federal law.

(c) Assuring compliance with the applicable zoning ordinance.

(d) This section shall also apply to a city or city and county which incorporates on or after January 1, 1985, and which includes within its boundaries any areas included in the tentative or parcel map described in this section.

When the incorporation includes areas included in the tentative or parcel map described in this section, “a condition that the city could have lawfully imposed as a condition to the previously approved tentative or parcel map,” as used in this section, refers to conditions the county could have imposed had there been no incorporation.

(e) For purposes only of a tentative subdivision map or parcel map that is extended pursuant to Section 66452.22, the five-year period described in this section shall be three years.

(f) For purposes only of a tentative subdivision map or parcel map that is extended pursuant to Section 66452.22, this section does not prohibit a city, county, or city and county from levying

a fee or imposing a condition that requires the payment of a fee, including an adopted fee that is not included within an applicable zoning ordinance, upon the issuance of a building permit, including, but not limited to, a fee defined in Section 66000.

SEC. 2. Section 66019 is added to the Government Code, to read:

66019. (a) As used in this section:

(1) “Fee” means a fee as defined in Section 66000, but does not include any of the following:

(A) A fee authorized pursuant to Section 66013.

(B) A fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(C) Rates or charges for water, sewer, or electrical services.

(D) Fees subject to Section 66016.

(2) “Party” means a person, entity, or organization representing a group of people or entities.

(3) “Public facility” means a public facility as defined in Section 66000.

(b) For any fee, notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this subdivision is available shall be mailed at least 14 days prior to the first meeting to an interested party who files a written request with the city, county, or city and county for mailed notice of a meeting on a new or increased fee to be enacted by the city, county, or city and county. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body of the city, county, or city and county may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. The legislative body may send the notice electronically. At least 10 days prior to the meeting, the city, county, or city and county shall make available to the public the data indicating the amount of cost, or the estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues. The new or increased fee shall be effective no earlier than 60 days following the final action on the adoption or increase of the fee, unless the city, county,

or city and county follows the procedures set forth in subdivision (b) of Section 66017.

(c) If a city, county, or city and county receives a request for mailed notice pursuant to this section, or a local agency receives a request for mailed notice pursuant to Section 66016, the city, county, or city and county or other local agency may provide the notice via electronic mail for those who specifically request electronic mail notification. A city, county, city or county, or other local agency that provides electronic mail notification pursuant to this subdivision shall send the electronic mail notification to the electronic mail address indicated in the request. The electronic mail notification authorized by this subdivision shall operate as an alternative to the mailed notice required by this section.

SEC. 3. Section 66023 of the Government Code is amended to read:

66023. (a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product, public facility, as defined in Section 66000, or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable, but is not required to conduct the audit if an audit has been performed for the same fee within the previous 12 months.

(b) To the extent that the audit determines that the amount of any fee or charge does not meet the requirements of this section, the local agency shall adjust the fee accordingly. This subdivision does not apply to a fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(c) The local agency shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the local agency the amount of the local agency's reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the local agency shall reimburse unused sums, if any, or the requesting person shall pay the local agency the excess of the actual cost of the audit over the sum which was deposited.

(d) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the

product or service shall conform to generally accepted auditing standards.

(e) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(f) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(g) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

SEC. 4. Section 66452.22 of the Government Code is amended to read:

66452.22. (a) The expiration date of any tentative or vesting tentative subdivision map or parcel map for which a tentative or vesting tentative map, as the case may be, has been approved that has not expired on July 15, 2009, and that will expire before January 1, 2012, shall be extended by 24 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6, 66452.11, 66452.13, 66452.21, or 66463.5.

(c) Any legislative, administrative, or other approval by any state agency that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 24 months if this approval has not expired on July 15, 2009. This extension shall be in addition to any extension provided for in Sections 66452.13 and 66452.21.

(d) (1) For purposes of this section, the determination of whether a tentative subdivision map or parcel map expires before January 1, 2012, shall count only those extensions of time pursuant to subdivision (e) of Section 66452.6 or subdivision (c) of Section 66463.5 approved on or before July 15, 2009, and any additional time in connection with the filing of a final map pursuant to subdivision (a) of Section 66452.6 for a map that was recorded on or before July 15, 2009.

(2) The determination made pursuant to this subdivision shall not include any development moratorium or litigation stay allowed or permitted by Section 66452.6 or 66463.5.

(e) The provisions of Section 65961 relating to conditions that may be imposed upon or after a building permit for a subdivision of single- or multiple-family residential units or a parcel map for a subdivision for which no tentative map was required, are modified as set forth in subdivisions (e) and (f) of Section 65961 for tentative maps extended pursuant to this section.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Approved _____, 2009

Governor